IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH

R.S.A. No. 701 of 2007(O&M)
Date of decision: March 5,2007

Kundan Singh and others V. Kashmir Singh and others

CORAM: HON'BLE MR.JUSTICE VINEY MITTAL

Present: Shri Sarbjeet Khaira, Advocate, for the appellants.

Viney Mittal,J.

For the reasons given in the applications, the delay in filing and refiling the present appeal is condoned.

The plaintiffs are the appellants before this court who lost concurrently before the two courts below in their suit for possession by way of redemption.

The plaintiffs alleged that they had purchased the suit land measuring 3 kanals 13 marlas from Sukhdev Singh, Sulakhan Singh, Makhan Singh sons of Kartar Singh vide sale deed February 7,1984 and mutation had been entered in favour of the plaintiffs. At the time of the execution of the sale deed, suit land was under mortgage of Shiv Singh son of Dhirta Singh. According to the plaintiffs, when the mortgage deed was executed in the year 1967, the said land was already under mortgage of Uttam Singh son of Natha Singh. Shiv Singh had got its possession on October 22,1973 but no entry was made in this regard in the revenue record. The plaintiffs alleged that period of mortgage of suit land for Shiv Singh 18 years which commenced on October 22,1973 and expired on October 21,1991. Shiv Singh had died and the suit land had vested in his legal representatives, defendants No.1 to 7.

Plaintiffs further alleged that at the time of the execution

of the sale deed of suit land, Rs.2000/- was left with the plaintiffs as 'Amanat' to give the same to the mortgagee, Shiv Singh, so as to redeem the land.

It was further alleged by the plaintiffs that an earlier suit filed by them for declaration and redemption had been dismissed on September 7,1994 as pre-mature. Later on the plaintiffs had filed a petition for redemption before the Assistant Collector First Grade. The said petition was also dismissed on December 21,1998 by holding that the plaintiffs were not owners of the land. On that basis, the plaintiffs maintained that although they had been requesting defendants No.1 to 7 to receive the mortgage amount and redeem the land and also to deliver possession to the plaintiffs but the defendants were not accepting the same.

The suit was contested by defendants No.1 to 7. It was maintained by them that Shiv Singh was owner in possession of the suit land since mortgage deed and after his death, Kashmir Singh defendant No.1 had come into possession as owner. The defendants maintained that plaintiffs have no right, title or interest in the suit land. The entire claim made by the plaintiffs was denied.

The learned trial court dismissed the suit filed by the plaintiffs.

The plaintiffs took up the matter in appeal. The learned first appellate Court reappraised the entire evidence. On such reappraisal, the learned first appellate court has also come to the conclusion that the evidence produced on the record did not reflect that there was any mortgage deed in favour of Shiv Singh. In fact in the revenue record, suit land was still shown to be mortgaged in favour of Uttam Singh and Kashmir Singh, defendant No.1, has been shown in its possession as Ghair Dakhilkar. Accordingly, it was held

that no evidence what-so-ever has been led by the plaintiffs that the land in question was ever mortgaged in favour of Shiv Singh. No mortgage deed in favour of Shiv Singh was produced, even to indicate that mortgage period with Shiv Singh was for 18 years. The appellate Court also held that the period of redemption for the mortgage in favour of Uttam Singh and even in favour Shiv Singh, even if he be taken to be mortgagee, stood already expired and as such it could not be held that suit filed by the plaintiffs was within limitation. For the lack of the evidence led by the plaintiffs to prove the aforesaid fact, the appeal field by the plaintiffs was also dismissed.

Nothing has been shown that the findings recorded by the two Courts below suffer from any infirmity or are contrary to the record.

No question of law, much less any substantial question of law, arises in the present appeal.

Dismissed.

March 5,2007 (Viney Mittal)
sks Judge